

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DONNA CATHERINE WONG,  
individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

TARGET CORPORATION, a  
Delaware corporation; and DOES 1  
through 20, inclusive,

Defendants.

No. C 06-05398 WDB

ORDER VACATING FEBRUARY 6,  
2008, HEARING AND FOR  
SUPPLEMENTAL BRIEFING

On December 28, 2007, the parties filed a Joint Motion for Order Conditionally Certifying Settlement Class; Preliminarily Approving Proposed Settlement; Approving Notice to Class and Election Not to Participate; Approving Notice of Proposed Settlement; and Setting Hearing For Final Approval (the "Joint Motion"). The Joint Motion was set to be heard by the undersigned on Wednesday, February 6, 2008. That hearing is now VACATED and continued to **March 18, 2008, at 1:30 p.m.** In the interim, and **by no later than Monday, March 3, 2008**, the parties are ORDERED to file supplemental briefing on the following topics and to support all factual assertions with competent declarations:

(1) Proposed Settlement

The Joint Motion asks the Court to preliminarily approve a proposed settlement between the parties in Plaintiffs' class action against Target for alleged violations of the California Labor Code and for unfair business practices. The terms of this proposed

1 settlement require Target to pay a Maximum Settlement amount of \$10,000,000 to a class  
2 of more than 270,000 current and former Target employees, after subtracting the Class  
3 Representative Payment, Class Counsel Fees and Expenses, a payment to the California  
4 Labor Workforce Development Agency, and employment payroll taxes on settlement shares.  
5 The remaining funds are to be distributed to participating class members based upon the  
6 number of weeks each participating class member worked. Under the proposed settlement,  
7 each participating class member would be guaranteed a minimum of \$5.00. Class members  
8 with an average number of work weeks would receive about \$24.00.

9 Having reviewed the parties' submissions, the Court has concluded that it cannot  
10 determine whether to preliminarily approve the settlement without further information.  
11 Accordingly, by the deadline set forth above, counsel for the parties must file supplemental  
12 briefing that provides the Court with a detailed explanation of the information and reasoning  
13 that has informed counsels' estimates of the likely range of damages if liability were  
14 established on Plaintiffs' claims.

15 (2) Class Counsel's Fees

16 In the Joint Motion, counsel for Plaintiff and the class indicate that they will ask for  
17 a fee award of 33% of the Maximum Settlement Amount, which would result in a payment  
18 of \$3,333,333 in attorneys fees. Plaintiffs' counsel acknowledges that 33% of the Maximum  
19 Settlement Amount is larger than the "benchmark" 25% fee award that is more typical in the  
20 Ninth Circuit. *See e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047-48 (9th Cir. 2002).  
21 Accordingly, by the deadline set forth above, Plaintiffs' counsel must file supplemental  
22 briefing that provides (a) a principled and thorough justification for why use of the more  
23 typical 25% fee award is not appropriate in this case; and (b) all necessary information and  
24 data for the Court to perform a lodestar calculation for attorneys fees. This data must include  
25 the number of hours worked by any lawyer for whom counsel wishes to claim fees; the  
26 hourly rate each of these lawyers bill for his or her time; a description of each lawyer's  
27 education and experience; and what multiplier Plaintiffs' counsel asks the Court to use in  
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1 arriving at a fee award under the lodestar method. All assertions of fact in counsel's  
2 supplemental briefing must be supported by competent declarations.

3 (3) Payment to Class Representative

4 Plaintiffs are requesting a class representative payment of \$25,000. By the deadline  
5 set forth above, counsel for Plaintiffs must provide further explanation to the Court justifying  
6 this amount. Counsel also is directed to provide relevant cases where similar-size class  
7 representative awards were approved in class actions that were settled without protracted  
8 litigation.

9 (4) Revisions to Notice of Proposed Settlement

10 The Court has reviewed the parties' Notice of Proposed Settlement. With the  
11 supplemental briefing they file in response to this Order, the parties also must file a revised  
12 Notice of Proposed Settlement that explains the basis for Plaintiffs' counsels' judgments  
13 about the likelihood of prevailing on the contention that Plaintiffs' claims are not preempted  
14 by ERISA, and what outcome could be expected if the class lost the preemption argument.

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16 IT IS SO ORDERED.

17 Dated: February 4, 2008

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20 WAYNE D. BRAZIL  
21 United States Magistrate Judge

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Copies to: parties, WDB, stats